3
Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

ROBBYN BROWN,

Petitioner

v.

JOHN H. SNOW, et al,

Respondents

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI – APPENDIX II

Robbyn Brown, Pro Se
P.O. Box 0034
O'Fallon, IL 62269
(618) 632-5796 Ext. 132

A. In that particular position, no.
Q. Didn't offer you any?
A. No. That's wrong. I'm sorry. Yes, I went to a training in Springfield, I think. Was it in Springfield? I know I went to one. I'm sorry. I did go to one.
Q. Did they ever tell you that the EEO complaints were covered by the privacy act, or were you aware that EEO complaints -- prior to your discussion with Mr. Pagan, were you aware that they are covered by the privacy act?
MR. LLEWELLYN: Well, can she answer the first question first?
Q. (By Ms. Brown) Please.
A. I knew they were confidential, but I don't recall ever being told formally prior to, you know, my discussions with Victor that it was a breach of the privacy act.
Q. Would it be fair to say then that it made you feel uncomfortable such that you had to go and speak with Mr. Pagan regarding that before you responded to Ms. Swain?
A. Yes. I felt it put me in an awkward position.

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Q. Okay. We're on page two of Plaintiff's Exhibit 1, question Number 5, that was posed to you. Would you read that please for the record?
A. Did you hear Kathleen say that she had an employee who filed frivolous EEO complaints, and the answer to that is yes.
Q. And again, for the record you were not a manager at the time that you heard it?
A. No, I was not.

Q. Again, for the record, you were not -- you were not an EEO investigator?

A. No.

MR. LLEWELLYN: Are you going to ask this for every question? We'll stipulate that she is not a manager or an EEO investigator for the remainder throughout the questions.

MS. BROWN: Mr. Llewellyn, please. I'm sorry.

MR. LLEWELLYN: It's been asked and answered.

Q. (By Ms. Brown) You stated that you were not an EEO investigator. Were you employed by the regional complaint center?

A. No.

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Q. Okay. Can we go to Question 6 now? If you would, please read it for the record.

A. Have you seen or heard Kathleen do anything that you felt was discriminatory. If yes, please explain. It was that same day in December when Kathleen was down, December of '98. She was working in one of our conference rooms at an extra computer we had, a desk top, and she was working on two of my case file reviews.

And I went in there to talk to her about the case files, and while I was there -- because she was talking about what good cases they were and how well they were put together -- she started to complain about the cases we had been getting back from Chicago, which was where they were processed out.

And she was stating that they lost disks, they took paperwork out, and then would say it wasn't there when we really had -- had

everything together when the case left the group when it was properly assembled.

And she further stated that those people in Chicago don't know how to do their jobs, and when they're called on it, they hide behind DEO.

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Q. Question Number 7, would you read it for the record, please?

A. Do you think your work environment is hostile? If yes, please explain.

Well, during that time period I felt that the work environment was hostile because based on the things that had happened to me with Kathleen, based on what she had told me --

MR. LLEWELLYN: Is there a time frame we're talking about here?

A. Well, let's see.

Q. (By Ms. Brown) This was dated May 14th, 1999, so it would be prior to that. We can discuss events that transpired after that later.

A. It was during 1998 that I felt that Kathleen retaliated against me and engaged in reprisal against me, and also because of the statements that she had made about Robbyn Brown and the information that she had planned to share with me about Robbyn Brown, I felt the whole situation was hostile.

Q. So Ms. Swain is no longer a group manager; is that correct?

A. That's correct.

Q. Has the environment improved since

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she's left, in your opinion?

A. Yes.

MR. LLEWELLYN: I'm going to object to the form of the question as her speculating to the environment with any other employees except to her own personal experience.

MS. BROWN: That's fine. We are going to depose the other employees so we can get their information separate.

Q. (By Ms. Brown) Number 8, if you would read that, please.

A. Has any member of your group or in your POD shared with you any information regarding Kathleen sharing an EEO file with them or that she made derogatory or slanderous comments about any employees. If yes, please explain.

And the response to that is yes. The two people I know of are Karen Hudgins -- do you need a spelling? It's H-u-d-g-i-n-s -- and Victor Pagan.

Q. You've already stated for the record that Mr. Pagan was present when she made comments regarding plaintiff's performance at the -- during your lunch period, and that he had advised

you not to open the EEO file that she attempted to share with you.

MR. LLEWELLYN: I'm going to object to the form of that. There is no evidence that it was an EEO file at this time.

Q. (By Ms. Brown) You stated that Ms. Swain told you that those were questions provided by the EEO investigator, which there has been evidence introduced previously that the EEO investigative file contained --

MR. LLEWELLYN: Object to the form.
Q. (By Ms. Brown) -- the EEO questions --
MR. LLEWELLYN: Object to the form as you're calling it an EEO file. That's my objection.
Q. (By Ms. Brown) The EEO investigative file then, we haven't addressed information that Ms. Hudgins shared with you. What would that be? You stated that you discussed that -- something -- something to the effect that you discussed something with her?
A. I know that Kathleen shared a paper with Karen regarding Robbyn Brown.
Q. Is this something Ms. Hudgins told you

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or something you witnessed?
A. It's something she told me.
Q. Okay. Has Ms. Hudgins shared anything else with you regarding the file?
MR. LLEWELLYN: Again, objection with regard to referring to it as a file.
Q. (By Ms. Brown) You can still answer the question.
A. I think I should probably let Karen speak for herself.
Q. Okay. What exactly has -- In your recollection has Ms. Hudgins shared with you then? You won't speak for what she has in her possession, you'll just speak from -- you'll just attest to what she shared with you or what she told you.
A. Well, we have discussed the fact that Kathleen talked a lot and she talked about things that she shouldn't discuss, things that were

confidential about you, and that how anyone could say she hadn't breached the privacy act would be beyond us.

Q. Okay. Do you have concerns that she would breach information regarding your employee file?

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A. Yes.

Q. Do you think that she's done that?

A. Yes.

Q. Do you suspect that she's done that?

A. Yes.

Q. What evidence do you have to that effect?

MR. LLEWELLYN: I'm going to object at this point. The evidence with regard to her case has no relevance in this case.

Q. (By Ms. Brown) He can object. You are still required to answer the question though.

MR. LLEWELLYN: I'm going to advise her -- She can make the determination whether or not she wants to answer that question based upon her own pending case and whether or not she wants to disclose that information here.

A. Well, my case is closed.

Q. (By Ms. Brown) Okay.

A. My case was closed in May of 2000, but I'm not at liberty to state how it was closed.

Q. That's fine.

A. It was at a group meeting at Caseyville, and it was in 1999 shortly after Kathleen left the group. And I think it may have

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been June. I could find out for sure.

Q. Okay.
A. But the meeting had ended and I was getting ready to get into my car, and tax auditor Bill Spiser called to me and asked me to wait a minute, and he walked over to my car.
And Bill and I have always been cordial and professional and talk about, you know, his dog and just different things, and I asked him, you know, friendly, I was friendly, you know, like what's up or something like that, you know, I gave him a greeting.
And Bill said to me, said, well, I don't appreciate what you have done to our group manager.
Q. Was he joking?
A. No. He was serious and he was angry.
MR. LLEWELLYN: I'm going to object to the form of the question.
Q. (By Ms. Brown) How did you perceive his behavior to be? Did you feel uncomfortable?
A. I felt attacked.
Q. Attacked. That's a pretty harsh word.
A. Verbally attacked.
Q. Did you report this to anyone?

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A. Yes, I did.
Q. To whom?
A. To the DEO office.
Q. Did anything come out of this to your knowledge?
A. No, because at another meeting --
MR. LLEWELLYN: Is there a time?
A. It's after that. I'm not sure when it

was. It was a survey feedback meeting, not for survey 2000 but for survey '99, so it would have been probably late summer of '99 or September of '99.

Mr. Spiser once again -- we were at the Caseyville township hall and he was in the meeting room already, no one else was there, and I walked in, and -- and then he started complaining again about what I was doing to the group manager and, you know, he was just -- I don't remember exactly what he said because I was shaken up by it.

And I left the room and went to the ladies room, and then when I came back to the meeting room, Karen Hudgins had arrived.

Q. Did anyone else witness this then?

A. No, I don't think so. I think it was

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of 2000?

A. Yes. I finally got the paperwork in May of 2000.

Q. The remedies you sought, did you receive it?

A. Yes.

Q. Thank you. Ms. Pagan, you mentioned earlier that you've attended group meetings in Caseyville. Would that be the Caseyville Township Building?

A. Yes.

Q. Okay. You've -- at some of these group meetings there -- well, at these group meetings representatives from National Treasury Employees Union, otherwise referred to as NTEU, they're required to be there; is that correct?

A. Yes.

Q. One of these meetings Todd Harbor, who represented you in a matter, he was present; is that correct?
A. Yes.
Q. What -- In your opinion what was the climate of that meeting? There were several discussions that took place. How did you perceive the meeting to be in terms of employee

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involvement and -- and the employee involvement, their interaction with one another?
MR. LLEWELLYN: I'm going to object to the compound nature of the question. If you understand the question, you can answer it, but I don't understand the question.
A. Well, I'd like to hear it again, but I would kind of like to go to the ladies room.
MS. BROWN: We can take a break now. Is that acceptable to you two? About 15 minutes then?
THE WITNESS: Yes.
MS. BROWN: It's about 11:22 by that clock. We'll be back here about 11:37 or 11:40.
(Whereupon a brief break was taken.)
(Whereupon the reporter read back the last question.)
Q. (By Ms. Brown) Can you answer the question now, please?
A. It was a survey feedback meeting for survey 1999, and it was -- It was like in the late summer or early full of '99 the meeting was held. Todd Harbor was there. Glen Glauber, G-l-a-u-b-e-r, was our acting group manager. Glen came in, I think, in August, and Todd Harbor

was there along with other group members.

And the meeting was getting totally out of control. There were loud voices. There were comments made by two of the group members. These comments were against Robbyn Harris-Brown.

And the two people that made the comments was Catherine Gilmore Murphy and Diane Winsing.

Q. Do you remember what those comments were or what was -- what was the gist of those comments?

A. Well, Bill Spiser was also involved in this, too. So it was those three that were -- they were arguing about the way the group conditions were and how they had been, and instead of blaming Kathleen Swain, as I thought they should have for the group conditions and the divisiveness of the group, they were -- Diane, Catherine and Bill were blaming Robbyn, saying she had caused all the problems in the group.

And Todd Harbor was representing the union, and he was trying to interject and trying to calm things down. And I heard Bill Spiser tell Todd, if you don't shut up and stop it, I'm going to hit you.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBBYN BROWN, Plaintiff vs. LAWRENCE H. SUMMERS, Secretary of the Treasury, DORIAN MORLEY, Director, Regional Complaints Center, DELORIS FEATHERSTONE, Manager, and KATHLEEN SWAIN, Manager, Defendants.

No. 99-CV-0745-DRH
DISCOVERY DEPOSITION OF KAREN HUDGINS

Taken on behalf of Plaintiff
November 17, 2000

Sarah L. Paszkiewicz, RPR
Certified Shorthand Reporter
License No. 084-004225

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Can you review it to see whether or not that -- those comments or those statements were yours and whether or not you signed that particular document?

A. Yes, they are and I did.

Q. Okay. Would you review the statements? We will be going over those, so I just want you to take a few minutes to look it over.

MR. LLEWELLYN: Mark it as Plaintiff's 1?

(Whereupon Exhibit 1 was marked.)

Q. (By Ms. Brown) Would that -- Is that a document that you signed or is that a copy of a document you signed? That is your signature?

A. Yes.

Q. We are going to be going over that. I'll direct your attention to question Number 4. Would you read that for the record, please?

A. Did Kathleen share an EEO file with you.

Q. And your response was?

A. Yes.

Q. Is that still your testimony?

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A. As I think when I elaborated just a little bit in the sentence below, I did see something. I really cannot definitely say that it was an EEO file, but it was something relating to an EEO file. I don't actually know what is in an EEO file.

Q. Since you never filed an EEO complaint you're not familiar with what's enclosed with an EEO file?

A. No, I'm not.

Q. What exactly was it that you saw that made you believe it was related to an EEO file?

A. Well, considering that this has been at least three years ago, my memory is not crystal clear relating to it, but it was a document that did indicate complaints that Robbyn Brown had against Kathleen Swain regarding discrimination.

Q. Okay. Did you ask Ms. Swain to give

you that file?
A. No.
Q. You stated earlier that you're a revenue agent. During the time that Ms. Swain shared this file with you, what -- this EEO related matter with you, were you -- were you a

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manager at that time?
A. Was I a manager?
Q. Yes.
A. No.
Q. Were you an EEO investigator?
A. No.
Q. Were you acting as a manager?
A. No.
Q. How did it come about? Did she just walk up to you? How did -- Can you tell us what exactly happened there?
A. Kathleen would come to our Carbondale office periodically to visit the employees there. And she offered to show me this document basically. It was in the afternoon. I don't remember what day. And the best I can do really, it was in 1997 sometime.
Q. Okay. That's fine. So she -- did she say, do you want to see this file or --
MR. LLEWELLYN: I'm going to object to the form of the question referring to it as file.
MS. BROWN: How would you like for me to describe it?
MR. LLEWELLYN: That's my objection.
MS. BROWN: Okay. Your objection is

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noted.

Q. (By Ms. Brown) How did she approach you, to the best of your recollection?
A. It was related to she had been discussing the complaint with me.
Q. Okay. Did you initiate this conversation?
A. No.
Q. And again, Ms. Swain was your manager at the time?
A. Yes.
Q. Did you ask her not to discuss this with you?
A. No.
Q. How did you feel about the information being shared with you regarding another employee?
A. At the time, really I was just more saddened at the fact that there was a complaint going on.
Q. Okay. Can you read question Number 5, please?
A. Did you hear Kathleen say that she had an employee who filed frivolous EEO complaints?
Q. Your response was?
A. Yes.

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Q. Who was that employee?
A. Robbyn Brown
Q. And you go on to state?
A. I don't remember the exact wording of what was exactly said, but Kathleen did discuss that there had been a complaint filed and that she believed that it didn't have any merit so those probably weren't her exact words.
Q. Have you had the opportunity to discuss this with anyone else, this complaint?

A. Cheryl Pagan and I work in the same office and we haven't --

MR. LLEWELLYN: I'm going to object. Clarification, which complaint are we discussing?

MS. BROWN: We're talking about the matter that she's here being deposed for, Robbyn Brown versus Lawrence Summers, Dorian Morley, D-o-r-i-a-n, M-o-r-l-e-y, Delores Featherstone and Kathleen Swain.

Have you had any opportunity to discuss this case with anyone else?

A. Cheryl Pagan and I work in the same office, and we have discussed maybe not the particulars and the details, but discussed the complaint somewhat.

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ROBBYN BROWN, Plaintiff vs. LAWRENCE H. SUMMERS, Secretary of the Treasury, DORIAN MORLEY, Director, Regional Complaints Center, DELORIS FEATHERSTONE, Manager, and KATHLEEN SWAIN, Manager, Defendants.

Cause No.

COMPLAINT

(Filed September 30, 1999)

COMES NOW the Plaintiff, ROBBYN BROWN, Pro Se, and for her Complaint against Defendants, LAWRENCE SUMMERS, SECRETARY OF THE TREASURY, et al; DORIAN MORLEY, DIRECTOR, REGIONAL COMPLAINT CENTER OF THE DEPARTMENT OF THE TREASURY; DELORIS FEATHERSTONE AND KATHLEEN SWAIN, MANAGERS WITH THE INTERNAL REVENUE SERVICE, AN AGENCY OF THE DEPARTMENT OF THE TREASURY, states as follows:

1. Plaintiff brings suit against Defendant Lawrence H. Summers, Secretary of the Department of the Treasury, et al, pursuant to Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et. seq., and The Civil Rights Act of 1991, 42 USC 1981a.

2. Plaintiff brings suit against Defendants Deloris Featherstone and Kathleen Swain et al, pursuant to 42 USC §§ 1981, 1983 and 1985. [1]

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6. In furtherance of Defendant's continuing course of intentional discrimination and retaliation for Plaintiff's prior complaints, Kathleen Swain without Plaintiff's consent, and in violation of the Privacy Act, 5 USC 552a-(b) and the Freedom of Information Act, 5 USC 552:

    a. Willfully and maliciously unlawfully disclosed contents of Plaintiff's EEO complaints to Plaintiff's co-workers and other unidentified parties who were not entitled to receive it;

    b. Knew that disclosure of the specific material was so prohibited, and

    c. Provided false information regarding the complaints to said co-workers.

7. In furtherance of Defendant's continuing course of intentional discrimination and retaliation for Plaintiff's prior complaints, Kathleen Swain maligned Plaintiff's character and professional reputation to Plaintiff's co-workers and other unidentified parties.

8. All of the foregoing was done with the intent to inflict further emotional distress upon Plaintiff, undermine Plaintiff's position authority, defame Plaintiff's character, alienate Plaintiff from her co-workers, and to further cultivate a hostile working environment.

9. Said actions created a hostile working environment in which other employees engaged in ridicule, insults and similar inappropriate and demeaning conduct towards plaintiff in violation of the Internal Revenue Service's Rules of Conduct and with malice and reckless indifference to the federally protected rights of plaintiff.

10. Said actions created a hostile working environment in which other employees colluded to provide false and evasive answers to impede the investigation of this claim, in violation of the Internal Revenue Service's Rules of Conduct. [17]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

Robbyn C. Brown, Appellant, v. Robert E. Rubin, Secretary, Department of the Treasury, Agency.
Appeal No. 01981074
Agency No. 97-3084

DECISION

Appellant filed an appeal with this Commission from a final decision of the agency concerning her complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. The final decision was received by appellant on October 23, 1997. The appeal was postmarked November 22, 1997. Accordingly, the appeal is timely (see 29 C.F.R. §1614.402(a)), and is accepted in accordance with EEOC Order No. 960, as amended.

On May 7, 1996, appellant initiated contact with an EEO Counselor. The record contains the report of an agency EEO Counselor who stated that on June 10, 1996, appellant discussed her current annual appraisal [March 1, 1995 through March 31, 1996] that was written by her Manager and her Branch Chief; and that she stated that she would file a grievance with her Union on this matter.

On June 25, 1996, appellant filed a grievance. The subject of the grievance was identified in the following fashion:

Objection is made to the failure and refusal of the agency to prepare grievant's annual appraisal in a fair and objective manner. In addition, the narrative evidences reprisal for the exercise of grievant's appeal rights granted by law, rule or regulations.

On January 3, 1997, appellant filed a formal complaint, alleging that she was the victim of unlawful employment discrimination on the bases of race, sex, and reprisal.

By letter to appellant dated February 6, 1997, the agency stated that appellant's complaint was comprised of eight allegations. At the conclusion of the letter, the agency noted that the EEO Counselor's Report reflected that appellant had a pending union [2] grievance regarding her most recent performance appraisal. The agency asked appellant if this were correct, and if appellant was raising the issue of this performance appraisal in her formal complaint.

By letter dated February 15, 1997, appellant stated that the appraisal had been raised during pre-complaint processing, but that she was pursuing the matter through a union grievance and not in her formal complaint.

By letter dated May 20, 1997, an agency Chief informed appellant's Union Steward that the agency was unable to continue the processing of the grievance in the negotiated grievance forum because appellant was substantially involved with the EEO process and "has elevated her complaint to a formal status."

By letter dated September 19, 1997, the agency informed appellant that the Investigative File reflected that the issues raised in her formal complaint were comprised of the

following allegations:

1.Whether Complainant was discriminated against . . . when on or around May 7, 1996, she learned that on various occasions between 1994 and 1996 her former manager allegedly (a) assigned selective return work assignments to other co-workers; and (b) did not assist her with employee development.

2. Whether Complainant was discriminated against . . . when on or around May 8, 1996, she was not selected for a temporary one year promotion to the position of Internal Revenue Agent, GS-512-13 for Vacancy Announcement Number NFB 95-5O8MSL.

3.Whether Complainant was retaliated against by her current Manager and Branch Chief when (a) she was subjected to multiple workload/work in process reviews; (b) she was subjected to 100% case file evaluations on closed cases; (c) she was subjected to the imposition of work-related policies and procedures more harshly than other co-workers; and (d) she was denied Acting Manager assignments.

At the conclusion of the letter, the agency indicated that the "remaining issues" of appellant's complaint would be addressed in separate correspondence.

By letter dated October 6, 1997, appellant requested that her current performance appraisal be reinstated as part of her formal complaint.

[3]

On October 21, 1997, the agency issued a final decision that is the subject of the instant appeal. Therein, the agency solely addressed the allegation regarding the March 1995 -

March 1996 performance appraisal, and dismissed this allegation on the grounds that appellant raised this matter in a previously filed grievance. Specifically, the agency found that appellant's union grievance on this matter, filed on June 25,1996, preceded the filing of the formal EEO complaint on January 3, 1997.

On appeal, appellant argues that she was provided false information by the agency, and that she relied upon such information in removing the performance appraisal of March 1995 to March 1996, from the EEO complaint process in order to pursue this matter under the negotiated grievance procedure.

Appellant states that following her initial EEO Counselor contact on May 7, 1996, she received the March 1995 - March 1996 performance appraisal on or about June 3, 1996, by her Manager. Appellant further states that at that time, her Manager informed her that the performance appraisal was prepared by an agency Branch Chief; that the appraisal's narrative contained evidence of reprisal; and that appellant submitted a copy of the appraisal to the EEO Counselor with the intention of expanding her complaint to address this issue. Appellant argues that on June 12, 1996, the agency EEO Counselor informed her that the agency Branch disavowed any knowledge of appellant's pursuit of the EEO complaint process and, as such, could not have acted in reprisal against her through the issuance of the appraisal. Appellant states that she thereupon consulted a union official with the intent of pursuing the appraisal through the grievance process; and that the union official expressed concern that the issue of her appraisal was part of her EEO complaint. Appellant states that she informed the union official of the EEO Counselor's statement that the Branch had no knowledge of her pursuit of the EEO complaint process; and that the grievance was filed on June 25, 1996. Appellant

argues that she subsequently discovered in September 1997, that the agency Branch Chief who prepared her performance appraisal had been aware of appellant's decision to pursue the EEO complaint process as early as May 11, 1996.

Moreover, appellant argues that on May 20, 1997, the agency Branch Chief informed appellant's Union Steward that the agency could not process her grievance because the issue was raised in the EEO Forum.

In response, the agency argues that appellant was not induced to abandon her intention to pursue the March 1995 - March 1996 [4] performance appraisal in the EEO complaint process. Specifically, the agency argues that a review; of the EEO Counselor's report contradicts appellant's assertion, and that appellant specifically told the EEO Counselor that her intention was to file a union grievance. Moreover, the agency argues that nothing in the EEO Counselor's report suggests that appellant intended to pursue the allegation relating to the performance appraisal in the EEO complaint process. In support of this argument, the agency makes reference to several pages in the EEO Counselor's notes that include the following entries:

June 10, 1996

Complainant discussed her current annual appraisal written by her manager and the Branch Chief. She stated she would file a grievance with the union. She stated her rating was unchanged and it did not reflect her performance.

June 12, 1996

Discussed complaint status with complainant on the telephone.

The agency acknowledges that it "erroneously discontinued" processing of appellant's grievance on May 20, 1997. The agency argues however, that by letter dated January 29, 1998, it agreed to reinstate and complete the processing of the grievance and that, therefore, appellant will not be without a remedy. In support of this argument, the agency faxed the Commission a copy of a letter dated January 29, 1998. Therein, the agency informed a Union Official that the agency is "ready, willing and able to reactivate the processing of [appellant's] grievance."

The record in this case contains a copy of a National Agreement between the agency and the National Treasury Employees Union which provided that "employees who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicapping condition have the right to raise the matter under the statutory procedure or the negotiated grievance procedure of this agreement, but not both."

EEOC Regulation 29 C.F.R. §1614.301(a) provides that when an employee wishes to file a complaint or a grievance on a matter of alleged discrimination, the employee must elect either the negotiated grievance procedure or Part 1614 of the EEO complaint process, but not both. This subsection also provides that an election to proceed under a negotiated grievance procedure is indicated by the filing of a timely written grievance. [5]

EEOC Regulation 29 C.F.R. §1614.107(d) provides that when a complainant has raised the matter in a negotiated grievance procedure and the complainant has elected to pursue the non-EEO process, the agency must dismiss the EEO complaint.

Appellant filed a grievance in May1996, on the issue of a

March 1995 – March 1996 performance appraisal. We are unpersuaded by appellant's contention on appeal that her decision to file a grievance was attributable to being improperly misled by agency EEO officials into refraining from pursuit of the EEO complaint process regarding this matter. Given the present record, however, we are unable to ascertain whether appellant has currently "raised the matter in a negotiated grievance" contemplated by Section 1614.107 (d). Specifically we note that the agency erroneously discontinued the processing of appellant's May 1996 grievance by letter dated May 20, 1997. We further note that by letter to appellant's Union Steward in January 1998, the agency indicated that it was prepared to "reactivate" the processing of the grievance. The record contains insufficient evidence, however, to determine whether appellant had reinstated the grievance she filed in May 1996. Accordingly, the agency's decision to dismiss the allegation regarding the March 1995 - March 1996 performance appraisal on the grounds that appellant raised this matter in a previously filed grievance is VACATED. Appellant's allegation is REMANDED to the agency for further processing in accordance with the ORDER below.

ORDER

The agency shall conduct a supplemental investigation to determine whether appellant reinstated the grievance that was originally filed on May 25, 1996, relating to her performance appraisal of March 1995 - March 1996. If, thereafter, the agency determined that appellant reinstated the grievance, the agency is ORDERED to issue a new final agency decision. If, however, the agency determines that appellant did not reinstate the grievance, the agency is ORDERED to notify appellant of the further processing of the allegation relating to the performance appraisal from the point that processing of this allegation ceased. The supplemental investigation and

issuance of the final decision or notice of processing must be completed within thirty (30) calendar days of the date that this decision becomes final.

A copy of the final agency decision and/or a copy of the agency's notice of further processing of the allegation must be sent to the Compliance Officer as referenced below.

[6]

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0595)

Compliance with the Commission's corrective action is mandatory. The agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. The agency's report must contain supporting documentation, and the agency must send a copy of all submissions to the appellant. If the agency does not comply with the Commission's order, the appellant may petition the Commission for enforcement of the order. 29 C.F.R. §1614.503(a). The appellant also has the right to file a. civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§1614.408, 1614.409, and 1614.503(g). Alternatively, the appellant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File A Civil Action." 29 C.F.R. §§1614.408 and 1614.409. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. §2000e-16(c) (Supp. V 1993). If the appellant files a civil action, the

administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. §1614.410.

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MAY 17, 1999 FOR THE COMMISSION:

/s/ Carlton M. Hadden

DATE Carlton M. Hadden, Acting Director
Office of Federal Operations

the affidavit then?
THE COURT: Well, I don't know if that would be the appropriate way to do it. Do you have the '96 claim there in any of these exhibits?
MS. BROWN: I have her affidavit for –
THE COURT: Give her the affidavit and just for the purpose of refreshing her recollection without -- just let her look at her affidavit.
A. I think the portion that I'm having difficulty with in your question is the word, the use of the word "retaliation".
As I stated here, I do not recall how I first learned Robbyn Brown had sought DEO counseling; however, after the DEO investigator advised it was in May of '96, I reviewed my Franklin planner, and noted an entry on 5/11/96, which was a Saturday.
MR. LLEWELLYN: Can I ask that no more of the affidavit be read, please.
THE COURT: Don't read from the affidavit. I just wanted you to look at the affidavit for purposes of refreshing your recollection. That was all.
BY MS. BROWN:
Q. Ms. Swain, isn't it true that initially you advised the EEO counselor you were not aware of any EEO complaint filed by

24 me until July 10th of 1996?
25 A. I need to make a correction. You called me Ms. Swain.

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1 Q. I'm sorry. I'm a little tired. Go ahead,
2 Ms. Featherstone.
3 A.I had not remembered, and when it came up again, I did
4specifically indicate to the counselor that I didn't recall for
5sure and asked her, I said, you know, am I missing something
6 here? Was there a counseling session prior to that? Because I
7 honestly did not remember. When I filed my first affidavit, I
8 indicated the truth as I remembered it. I did not recall.
9 However, when she indicated to me that it was in May, that is
10 when I did go back and check to see if I had any notes to that
11 effect.
12 Q. Okay. Isn't it also true that you advised Bob Graf, in
13 August of 1996, you were not aware of my EEO complaint?
14 A.I don't recall if I advised Bob Graf of that or not. It
15 was just a matter that I did not recall.
16 Q. Okay. But isn't it also true that, based upon your
17 initial position that you weren't aware of my EEO complaint,
18 didn't you also maintain that you could not therefore have
19 retaliated against me?
20 A.I didn't -- you know, I didn't recall. When I went back
21 and checked my Franklin planner, I --as I sometimes do work on

22 the weekends, I will check my voice mail and I went back
--
23 after the counselor indicated to me that you had filed
24 something in May or had a counseling session in May, I
went
25 back to check because I wanted to be sure. I wanted to be
sure

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1that I was being accurate, and I honestly did not have a
2recollection prior to that.
3 Q. Okay. Isn't it true that in February of 1997, you also
4maintained that you didn't have any recollection -- I'm
sorry.
5Let me tell you what happened or give you the background.
6Isn't it also true that in February 1997, in a meeting between
7a second level grievance meeting between you, myself, and
8Bob Graf, you maintained that you didn't have knowledge
of the
9 EEO complaint until July 10th of 1996, isn't that true?
10 A. I don't recall that specifically what you're referring
11there to, but if I made reference to that in the meeting, it
12was because I didn't recall it at that point. I just probably
13didn't remember it at that point during that meeting.
14 Q. And that would have been February '97?
15 A. I'm not sure of the dates right at the moment, but --
16 Q. Your affidavit over here is dated July 18th – I'm sorry.
17 The statement you provided here, that was July 1997, is
that
18 correct? I can let you see it.
19 A. I'm not sure which affidavit you're referring to right at
20 the moment. May I look at other parts of it?
21 Q. I just want the dates.
22 A. This affidavit is dated July 18th of '97, and in that
23affidavit I indicated that I did not recall when I had learned

24 about your counseling session. I corrected it in that
25 affidavit because after the counselor told me that it was in

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1May, I went back and checked my Franklin planner notes because
2 I hadn't recalled it before that. I didn't remember it.
3 Q.Your Franklin planner, for those who may not know, what
4 exactly is that? Is that where you jot down -- is that like
5 your calendar?
6 A.Franklin planner is like a day planner where you indicate
7 appointments, other notes of conversations that you may have in
8 a particular period of time.
9 Q.And so then you didn't check your -- is it your testimony
10 you didn't check your day planner from May of 1996 up until
11 July of 1997?
12 A.I would have had no reason to because I didn't remember
13 that there would have been any events. So it's only after the
14 counselor indicated that it was that time, I thought, you know,
15 I will go back and check.
16 Q. Okay. Mrs. Featherstone, isn't it true you made the
17 recommendation for the Grade 13 temporary promotion in 1996, to
18 Patricia Leatherwood?
19 A.That would be -- which temporary promotion?
20 Q.I'm sorry. In Fairview Heights.
21 A.Yes, that would be correct.
22 Q.And isn't it also true that you made the recommendation to

23 Patricia Leatherwood for the Temporary -- I'm sorry, the
24 Permanent Grade 13 Revenue Agent position in 1998, for
the
25 Fairview Heights Revenue Agent position?

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Excerpts from Richard Knowles' Trial Testimony – Day 4

1 I'll overrule your objection, Miss Brown.
2 MS. BROWN: Mr. Knowles, if I could -- Your
3 Honor, motion to admit Exhibit Number 55.
4 THE COURT: Well, you have to lay a foundation
5 for it first, Miss Brown.
6 MS. BROWN: I already have. These are the
7 automatic referral cases from Mr. Knowles, the schedule
that
8 he provided to --
9 THE COURT: Well, by laying a foundation, what
10 I mean is you'll have to ask Mr. Knowles if he can identify
11 this exhibit.
12 MS. BROWN: Oh, I'm sorry. I'm not a lawyer.
13 Q. (MS. BROWN:) Mr. Knowles, can you identify this
14 document for me, please?
15 A. Okay. Looks like probably what I turned in when they
16 asked about some of these cases.
17 Q. Does it look like your writing?
18 A. Yes.
19 MS. BROWN: Your Honor, has foundation been
20 laid?
21 THE COURT: He still hasn't testified as to
22 what it is.

23 MS. BROWN: Okay.
24 THE WITNESS: It's my writing, and what I did
25 is I went back and found out who all the taxpayers were that

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1 came out of that Grand Jury case, made notes of any related
2 returns that came along with it, where they were initially
3 assigned to, and how we moved them out of the groups after
4 that.
5 MS. BROWN: Okay. Motion to admit Exhibit
6Number 55, please.
7 THE COURT: Any objection?
8 MR. LLEWELLYN: No objection.
9 THE COURT: Be admitted.
10Q. (MS. BROWN:) I apologize. It's a little blurry, but
11 at the top does it state "Automatic referral cases per Robbyn
12 Brown"?
13A. Yes.
14Q. So this would have been in response to an inquiry I had
15 made?
16 A. Yes.
17 Q. Over to the left-- I'm sorry, this is Page 55. It's
18 extracted from the -- one of the investigative files, and
19 it's noted "Page 1226," but over to the left, this column,
20 you're indicating the taxpayer, is that correct?
21A. If I remember right, what I did is I went through the
22 different names and used the first initial so we wouldn't
23 have any disclosure issues.
24 Q. I understand. And over here are you indicating where

25 the returns were assigned?

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1 A. Where they were initially assigned, right.
2 Q. And "'WM," does that mean white male?
3 A. Yes.
4 Q. Grade 12?
5 A. Yes.
6 Q. Would this have been Tim Neighbors?
7 A. Yes.
8 Q. So, let's see. You have 17 cases that we know of that
9 you reconstructed that were assigned initially to Tim
10 Neighbors?
11 A. I can only see through ---
12 Q. I'm sorry?
13 A. 17.
14 Q. I'm sorry?
15 A. I think it is 17. It's 17 or 18, but --
16 Q. But then over to the left, based upon this
17 reconstruction that you provided, all of those cases were
18 assigned to a white male Grade 12?
19 A. Correct.
20 Q. Would that have been Tim Neighbors?
21 A. Yes.
22 Q. Now, upon Tim Neighbors' promotion to the Grade
13,
23 were these cases then reassigned?
24 A. We started the reassignment before he got that
25 selection. Okay. The plan that we had worked out was we

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1 didn't have any information except for what was provided
to
2 the Grand Jury.

We went through -- this is a long story, but the original project on these cases started in my group. Had two revenue agents who had worked the case, different taverns, and found the unreported income. And they found that taxpayers were involved in the scheme with an organization that provided illegal gambling.
So that's how the cases got back into my group was the fact we were the source group that they built the case from for the Grand Jury case.
Q. Okay.
A. So when they get back in my group, obviously, the groups have changed from what we had originally, and what we had afterwards. I had other revenue agents that were on Grand Jury cases, and I had trainee agents.
Q. That was just one question I wanted to ask you.
A. Okay.
Q. But again, upon Mr. Neighbors' promotion, those cases were transferred out, some prior, some thereafter?
A. Right.
Q. Were civil fraud referrals made on these returns?
A. On several of them.
Q. Several?
A. Um-hum. I would not know about any of the ones that

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went to Group 8.
Q. Okay.
A. That would be outside my group.
Q.But did Tim Neighbors make referrals on some of these returns?
A. Yes, he did.
Q.Okay. And he would have received a fraud referral memo on these, as well?

A. You know, I couldn't find that many memos on it. As I recall, it went out, but he may have.
Q. Mr. Knowles, Catherine Gilmore testified yesterday that
on these cases some of the illegal gambling --
THE COURT: Ms. Brown, you can't tell him what another witness testified about.
MS. BROWN: Oh, okay. Can I just say that testimony has been provided?
THE COURT: No. We have a rule on witnesses, so one witness can't know what another witness testified to.
MS. BROWN: Oh, okay.
Q. (MS. BROWN:) Isn't it true, Mr. Knowles, that some of
the gambling income had been reported on those cases?
A. I don't know.
MS. BROWN:Okay. Can I tell him now?
THE COURT: No.
MS. BROWN: Oh. I'm just prohibited from

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telling him at all? Okay.
Q. (MS. BROWN:) Mr. Knowles, if I could direct your attention to Exhibit 8 previously admitted into the record—
hasn't it?
Oh, I make a motion to admit Exhibit Number 8.
MR. LLEWELLYN: No objection, Your Honor.
THE COURT: Be admitted.
Q. (MS. BROWN:) Mr. Knowles, does this document look
familiar to you?
A. Yes.
Q. What is it?

12 A. It's--it looks like it's a memo from Revenue Agent
13 Neighbors about potential conflict of interest that might
14 appear or take place on some of these cases -- on some cases.
15 Q. Now, isn't it also true that it's the policy of the
16 Internal Revenue Service to avoid the appearance of a
17 conflict of interest?
18 A. Well, sure it is.
19 Q. Okay, thank you. If you could go down to the bottom of
20 the exhibit. Is this your writing?
21 A. Yes, it is.
22 Q. And can you read it for us, please?
23 A. "Tim, thank you. Since the majority items are already
24 determined, i.e., the gambling income from whatever, also you
25 will be working primarily with power of attorneys, POA's, and

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1 due to related criminal charges and plea agreements, while I
2 agree you are in a tenuous position, the
3 customer/government's rights " --
4 THE COURT: Hand him the document. Maybe it
5 will be easier to read it.
6 THE WITNESS: It gets cut off at the bottom.
7 MS. BROWN: Okay.
8 THE WITNESS:"The government's rights – the
9 customer's/government's rights do not appear conflicted.
10 Press on."
11 Q. (MS. BROWN:) Thank you. So with that in mind, you
12 state that some of the gambling income has already been

13 reported, already been determined. I don't want to put words
14 in your mouth, but it's already been determined, and you also
15 state further, is it true, that some of this information was
16 determined by plea agreements?
17 A. Um-hum.
18 Q. Isn't it true that I prepared those, some of those plea
19 agreements?
20 A. See, I don't know what -- I don't know what you did in
21 the Grand Jury.
22 Q. Okay, that's fine.
23 A. But I do know, if it came out of the Grand Jury's
24 public record, then we can use it.
25 Q. Correct. But the point being, I was in Grand Jury, and

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1 isn't it one of the responsibilities of an expert witness
2 assigned to Grand Jury to prepare plea agreements?
3 A. Well, it may be one of the things that they are
4 required to do, right.
5 Q. Okay, thank you. Mr. Knowles, if I could direct your
6 attention back to Exhibit 55?
7 A. Okay.
8 Q. Towards the bottom here, you have two of these cases
9 being transferred from what you've said, or from Tim
10 Neighbors, and to a white female that's a Grade 11?
11 A. Um-hum, yes.
12 Q. Correct? Did this white female receive an award out of
13 this?
14 A. I don't know.
15 Q. Was she given a temporary Grade 12, seeing that Tim

was 16 working the cases prior?
17 A. No.
18 Q. No. Did she receive a higher grade of duty pay?
19 A.Well, she would have only done that if she exceeded 25
20 percent of her time. Just because you have a case does not
21 mean that you get -- you qualify for higher grade.
22 Q. We'll go into that later. I'm just asking yes and no
23 right now.
24 Did you make an analysis as to whether or not higher-graded
25 duty pay was applicable?

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1 A. Well, you know, if you remember yesterday, we talked
2 about --
3 Q. Is it yes or no?
4 A.I do it all the time. That's one of the things you do
5 all the time.
6 Q. So in that situation you did, and you determined --
7 A. That they would not have qualified. One or two cases
8 would not have made it mandatory to do that.
9 Q. Okay. Did you discuss it with the employee?
10 A. I don't remember.
11 Q. Okay. But again she was assigned the returns from the
12 Grade 12, and not -- without a temporary promotion?
13 A. Yes.
14 Q. Mr. Knowles, isn't it also true that fraud referrals
15 are integral components of the examination business plan?
16 A. Well, that's why -- what we do, yes.
17 Q. That's why we are here?
18 A. That's one of the things we do. It's just an outcome
19 of what we do.
20 Q. You're not saying that's why we are here, to just set
21 up fraud, are you?

22 A. Oh, no.
23 Q. It's also looked upon very favorably, isn't it?
24 A. Sure.
25 MS. BROWN:Okay. Mr. Knowles -- I would like

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1 A. Well, when she's been my manager, I have, yes.
2 Q. You have had occasion to review or see her writing; is
3 that correct?
4 A. Yes.
5 THE COURT: What exhibit is this?
6 MS. BROWN: Exhibit 2, Page 2.
7 Q. (MS. BROWN:) Does this look like Mrs. Featherstone's
8 writing to you?
9 A. It could be.
10 Q. Okay. Over here where it has "temporary"?
11 A. Um-hum.
12 Q. Well, the "GR" at the top, does that indicate the grade
13 level of these particular employees?
14 A. Yes, I believe so.
15 Q. So, over to the left, would that indicate that these
16 employees were -- let's say they were temporary 13's?
17 A. Who now?
18 Q. I'm sorry, you don' have it up that far. A thousand
19 pardons. Billy Langfelder and Sharon Whitten.
20 A. Temp 13's?
21 Q. Correct?
22 A. That's how I would look at that.
23 Q. Isn't it true -- Mr. Knowles, this is Exhibit 2, Page
24 3. Larry Hardin, isn't it true he worked out of our office
25 as well?

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A. Yes.
Q. And he was a temporary 13?
A. Correct.
Q. Okay. Pete -- Pierre Whitley, a temporary 13?
A. Right.
Q. Debris Windland, temporary 13, correct?
A. Yes.
Q. Judy Lawrence, temporary 13?
A. It's not on the screen.
Q. Okay. Correct?
A. Yes.
Q. I'm sorry, going back to Exhibit 2, Page 3, the Branch 7 staffing, and Robbyn Brown, isn't it true that would be me?
A. Yes.
Q. Grade 12?
A. Yes.
Q. Mr. Knowles, isn't it also true that all of these individuals that were reflected as temporary 13's, isn't it also true that during the IRS reorganization they were reassigned to LMSB, being large and mid-size business?
A. Yeah, I believe that all -- well, I don't know about the temporary 13's, I know the permanent 13's did. I don't know about all the temporaries.
Q. Larry Hardin, he was a temporary 13; is that correct?
A. At one time, yes.

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Q. Was he not transferred into LMSB?
A. I'm not sure. Larry went to St. Louis, but I'm not sure what he went --
Q. Well, prior to St. Louis, isn't it true he was also working out of our office under the management of Lynn Glauber as a temporary 13?

7 A. He might have been. I don't remember.
8 Q. And Lynn Glauber, is it true, was the LMSB manager, or
9 is the LMSB manager?
10 A. Yes, she is.
11 Q. Can you distinguish SBSC from LMSB for the Jury,
12 please?
13 A. Sure. When they did the reorganization, they tried to
14 put us in work units that matched the work. So, SBSC is
15 small business, self-employed individuals, and those are
16 general businesses that most of us are in contact with
17 everyday; and then they set up what they call LMSB,
which is
18 your large, mid-size businesses, and that's your big
19 corporations.
20 Q. Thank you, Mr. Knowles. Isn't it also true that I was
21 transferred to LMSB?
22 A. Well, actually I think you applied for that and was
23 selected.
24 Q. There wasn't a promotion process for that; is that
25 correct?

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1 A. Well, as I understand, they had a window of
opportunity
2 for people who were Grade 12 that wished to go into
LMSB to
3 fill out an application, and they selected off that roster
4 somehow.
5 Q. But this wasn't a competitive promotion; isn't that
6 correct?
7 A. You mean like we typically would do it?
8 Q. Correct.
9 A. No. You had to prepare a document and put down what
10 you worked on.
11 Q. When you say "what you worked on," it would be

type of
12 cases?
13 A. Type of cases, activity codes, what you did, and then
14 they selected off of that.
15 Q. Okay. Isn't it also true that you had to compute your
16 examination time for certain activity codes?
17 A. I think so. I wasn't involved in that.
18 Q. You didn't have any employees that opted to go in or
--
19 A. Well, I think we did.
20 Q. But they weren't selected?
21 A. But they weren't selected, right.
22 Q. That's correct. Isn't it also true that I was the only
23 Grade 12 that went over based upon the hours that I
worked?
24 A. I don't know.
25. Q. Isn't it also true then that you could only go into

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1 LMSB if you had worked higher grade cases, your DET
time,
2 direct examination time, reflected that you had worked
3 higher-graded cases?
4 MR. LLEWELLYN: I'm going to object at this
5 point, Your Honor. This is subsequent to the '98
promotion.
6 I think it's irrelevant.
7 MS. BROWN: No, Your Honor, it's highly
8 relevant. It's highly relevant.
9 Q. (MS. BROWN:) Mr. Knowles, did they not look at a
time
10 period prior to 1998 when you went into the LMSB to
make that
11 computation?
12 THE COURT: You know, there's one thing about

13 making an objection and you make a response, and you got to
14 give me a chance to make a ruling.
15 MS. BROWN: I'm sorry.
16 THE COURT: All this IRS talk is really way
17 beyond me, but I really fail to see the relevance at this
18 point. I'm going to give you some latitude, but I think we
19 are going pretty far afield. But I'll give you some latitude
20 at this point and overrule the objection.
21 Q. (MS. BROWN:) Maybe you aren't the one to answer this,
22 Mr. Knowles, but you said you did have employees that did the
23 computation. Isn't it true that that computation covered
24 work performed during 1998 and 1999? Well, I'm sorry, I'll
25 retract.

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1 A. I don't know.
2 Q. I'll withdraw that question. The reorganization, isn't
3 it true, took place prior to the year 2000?
4 A. I think that's correct.
5 Q. That's correct. So then they would have been looking
6 at time spent on cases prior to the year 2000 in order to
7 make a determination?
8 A. Sure.
9 Q. Okay.
10 A. I think so.
11 Q. Mr. Knowles, isn't it also true that I returned from
12 LMSB -- this requires a yes or no response, if you would
13 indulge me -- I returned from LMSB back to SBSC in January

14 2002?
15 MR. LLEWELLYN: Same objection, Your Honor. I
16 think we are going way beyond the scope of this trial.
17 THE COURT: Well, I'll give her this question.
18 You can answer this question, but we are going to move
on.
19 THE WITNESS: Yes, you did.
20 Q. (MS. BROWN:)And you testified previously that you
21 were acting as the acting group manager for two groups,
both
22 Group 3 and Group 4?
23 A. Correct.
24 Q. So then you would know whether or not I went into
LMSB
25 because I came back to one of those groups; is that
correct?

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1 A. Correct.
2 Q. So the answer to that question that I previously posed
3 to you was that I did go into LMSB?
4 A. Yes.
5 Q. Thank you. And again, you said LMSB worked the
6 higher-graded cases, corporate cases, things of that nature?
7 A. As far as I know. There is several grade levels
8 available for every work unit.
9 Q. Okay, but isn't it true that the cutoff for LMSB at
10 that time were cases that were five million and above?
11 A. I think that's right.
12 Q. Okay. And they did make a determination at one
point
13 to reassign the Grade 12 revenue agents that have been
14 assigned to LMSB back to SBSC; is that correct?
15 A. I don't know if they did or not.
16 Q. Isn't it true that they increased the threshold in LMSB

17 from five million to ten million?
18 MR. LLEWELLYN: Your Honor, I have to continue
19 to object. I mean, there is nothing with regard to anything
20 in this case that she's questioning this witness about for
21 the last 10 or 15 minutes.
22 MS. BROWN: I disagree, Your Honor.
23 THE COURT: Well--
24 MS. BROWN: It goes directly to the failure to
25 promote cases. My position is that I have worked

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1 those particular cases -- I'm sorry.
2 THE COURT: You're talking about now
3 well beyond the period of time in '98. You're talking about the
4 present time.
5 MS. BROWN: No, sir. With all due respect, in
6 order to -- and if Mr. Knowles can't establish it, another
7 witness will -- in order to even go into LMSB --
8 MR. LLEWELLYN: Side-bar, Your Honor?
9 (Side-bar, on the record.)
10 (The following proceedings were held
11 out of the hearing of the jury.)
12 THE COURT: During what period of time are you
13 talking about that you're doing this LMSB?
14 MS. BROWN: When the IRS reorganized --
15 THE COURT: Answer my question.
16 MS. BROWN: When I went into LMSB, it was
17 actually 2000, but in order to -- no, no, let me finish, Your
18 Honor. In order to go into LMSB, if you were a Grade 12 --
19 THE COURT: When did you become a Grade 13?
20 Answer my question.

21 MS. BROWN: I wasn't a Grade 13 in LMSB.
22 THE COURT: Answer my question. You have a
23 habit of when I ask a question of not answering my question.
24 MS. BROWN: I'm sorry. I became a Grade 13 in
25 January 2002. I'm not talking about that.

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1 THE COURT: Okay. So you went to LMSB in the
2 year 2000. What's that got to do with your 1998 failure to
3 promote?
4 MS. BROWN: It has everything to do with it,
5 Your Honor, because in order to go into LMSB, they looked at
6 the time that you put in in 1998 and 1999 to make a
7 determination whether or not you could even go in it as a 12.
8 The Grade 13's automatically went in. The
9 Grade 12's, Teola Briggs is going to testify that they had to
10 go in and look on ERCS and get all of your time for the
11 higher grade cases that you worked, and then do a
12 computation. So it wasn't, you know, a shoe-in that you
13 went. You had to actually have performed in that level. My
14 position has always been that I had been doing that work.
15 Now, if I'm the only Grade 12 that went in,
16 the other individuals who were sitting on a Grade 13, meaning
17 that work was identified for them as a Grade 13, I went in as a
18 Grade 12 because I was working the Grade 13 cases. I was
19 the only one --
20 THE COURT: But your contention is that they

didn't give you the higher grade cases?
MS. BROWN: No. My contention is that I worked those cases, but I didn't get paid for or get recognized for it. This demonstrates that my time, based upon a time that they had available to them on our ERCS

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reports, it demonstrates that I was working those cases. How else could I have gotten into LMSB? Again, they looked at the time period from '98.
THE COURT: If they didn't give you credit for it, how could they have then found in the records that you were working it? They apparently did give you credit for it.
MS. BROWN: No, no, Your Honor. I know it's confusing because it's IRS, but let me explain. In order to go into LMSB, they had to go in and go back on ERCS, and I'm going to have Richard tell us about that, ERCS contains activity codes, time on cases, all of that information is compiled That doesn't equate -- we are talking about two separate things. Higher-graded duty pay and a temporary promotion does not equate to the same thing. In other words, I work on cases. When the cases come in to me, there is an activity code assigned to them. There is a source code showing how they came in. Activity code, you may not remember, was based upon the size of the companies. LMSB made a determination that we will allow some 12's. I think

there was only about 200 in the country. Illinois only got 11. Out of those, 11, seven came from the downstate area.
Seven of those included me. All of the other individuals were Grade 13's. The Grade 13's didn't have to compute their
time.
My time reflected that I had been doing that

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work back in 1998, which was not considered in the promotion
package. Their position has been, no, I hadn't been doing the work, but if I went into LMSB, I had to have been doing
the work based upon the activity codes. It was 1998 that they used. Teola Briggs can testify they had to go to a time
period before that to make that determination.
MR. LLEWELLYN: The nonselection in 1998 had nothing to do-- it considered 1997 in her evaluations. She's talking about stuff subsequent.
MS. BROWN: That's not true. That's not true, Your Honor.
MR. LLEWELLYN: That's my position.
MS. BROWN: Look at the evaluations for --
MR. LLEWELLYN: It's totally outside the scope of the case and it's irrelevant. And it's wasting this Court's time, and this jury's time, and all of our time.
MS. BROWN: Me thinks he does protest too much. In order to look at what he says goes up beyond the scope of 1998 promotion, that's absolutely false. If you
look at my evaluation, it's dated April 20, whatever, 1998.

Do you have something to add, Miss Dow?
MR. LLEWELLYN: No, no. We have nothing further.
MS. BROWN: He's getting frustrated because he knows that I'm making a point and I'm right.

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THE COURT: Well, I'll let you do it.
MS. BROWN: Thank you, Your Honor.
(The following proceedings were held in the presence and hearing of the jury.)
MS. BROWN: Those side-bars tend to throw me off a little bit. Where were we?
Q. (MS. BROWN:) We were talking about the LMSB. And again, you have been the acting group manager for both Groups 3 and 4?
A. In SBSC, yes.
Q. SBSC. And I was returned, or I have been reassigned back to SBSC; is that correct?
A. You are now on SBSC, yes.
Q. So you were in a position to know that I had been in LMSB?
A. Yes.
Q. Thank you. Mr. Knowles, if we could, please, I would like to discuss the acting group manager assignments. Plaintiff's Exhibit 54, Pages 1 through 5, are you familiar with that document?
THE COURT: 1 through 5 or 1 through 6?
MS. BROWN: Oh, do you have six? I'm sorry, there's another document. It's Page 6, but I'll ask you that one in a minute.
Q. (MS. BROWN:) If you could, Pages 1 through 5, are

you

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MR. LLEWELLYN: It's been asked and answered.
MS. BROWN: I'm getting confused because he's equivocating, here, you know, maybe it is, maybe isn't.
THE COURT: I thought he said that your question was accurate.
MS. BROWN: Okay.
THE COURT: The way you posed the question was accurate.
Q. (MS. BROWN:) Mr. Knowles, if I could direct your attention to Exhibit 54, Page 6?
A. Okay.
Are you familiar with -- would that be something that's pulled down from ERCS?
MR. LLEWELLYN: 56?
THE WITNESS: It's Exhibit 54, Page 6. That looks like it's part of -- looks like it's part of your hundred percent --
MR. LLEWELLYN: Your Honor, 54 --
THE COURT: She only talked about Pages 1 through 5 a while ago. She didn't ask about Page 6. Miss Brown, continue on with your witness.
Q. (MS. BROWN:) I'm sorry. You were saying?
A. Yeah This looks like it's part of it. It says "Page 8." There is several reports this would come out of, but someone generated a report and it has a list of case name,

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activity code, hours, age, that kind of stuff on there.
Would these kind of things be kept in the ordinary

course of business?
A. These would, yes.
Q. Okay. And over here, would that --
I'm sorry, motion to admit Exhibit Number 54,
Page 6.
THE COURT: What is it? I mean--
MS. BROWN: It's a report generated by ERCS.
THE COURT: I'm asking the witness.
THE WITNESS: It's a listing of, it looks like
a case that was assigned to Robbyn Harris, and it's a case
report as of that time. There's no date on it, but on
whatever date this was pulled out, it was a history of that
case.
MS. BROWN: Okay. And it's been sanitized,
Your Honor, so it doesn't have any protective
information on
it.
THE COURT: But what does it tell us? Does it
tell us the hours worked, or what is it?
MS. BROWN: It tells us the activity code --
THE COURT: I'm asking the witness.
THE WITNESS What's listed here is there's
three lines on it, the tax years, the source code, that's
where it came from, the activity code, how many days in

process, status of the case, the POD, aging codes, but the
total's been scratched out, any project code or statute dates
were scratched out, and the taxpayer name was scratched
out.
THE COURT: Is this a case she worked on as
acting group manager?
MS. BROWN: No, sir. It wouldn't be. What I
just wanted --
THE WITNESS: This would be a case she would

9 work as a revenue agent. It would have been a case assigned
10 to her that she would have worked.
11 THE COURT: Any objection, Mr. Llewellyn?
12 MR. LLEWELLYN: The only objection is Miss
13 Brown has scratched out the cumulative time on that, and I
14 think that's been the issue of the questioning.
15 MS. BROWN: Well, actually, no. The purpose
16 of this particular question, Your Honor, is I want him to
17 identify this activity code information that this report
18 generates.
19 MR. LLEWELLYN: The cumulative time issue is
20 not a protected issue and it's redacted from that document,
21 and that's the issue she's been discussing.
22 MS. BROWN: I'm not limited to discussing
23 other issues, am I?
24 MR. LLEWELLYN: That's not my point.
25 THE COURT: Well, let's go ahead and take our

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1 particular -- he's going to tell you what Activity Code 215,
2 whatever, means, and if any other documents -- that I worked
3 these particular cases during the period of time that I was
4 in his group.
5 THE COURT: Well, but in order to admit this
6 exhibit, the only thing that can be redacted is the taxpayer
7 name.

MS. BROWN: I can do that.
THE COURT: Okay. Then we'll admit --
MS. DOW: And their Social Security number and tax identification number.
THE COURT: Right, right. Then it will be admitted.
MS. BROWN: Okay.
(A recess was held.)
(The following proceedings were held in the presence and hearing of the jury.)
THE COURT: Thanks, folks. Please be seated. Okay, Ms. Brown.
Q. (MS. BROWN:) Mr. Knowles, if I could please direct your attention to Exhibit 23 -- I'm sorry, Plaintiff's Exhibit 63. Can you tell us, are you familiar with that document?
A. This is a printed copy of the Form 4502 that we were talking about earlier, the time input sheets. Once it's been

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input on the ERCS system, then this is a printout that would show time charges for whatever days.
MR. LLEWELLYN: No objection.
THE COURT: Be admitted.
Q. (MS. BROWN:) Okay. Are you able to see that on your screen?
A. Yes.
Q. Okay.
A. The top part of it.
Q. If you could just walk us through this up here. Does this, "Knowles," would that indicate that you were the originator?
A. I'm the one that pulled the report.
Q. You pulled this down from ERCS?

A. Yes.
Q. Over here (Indicating) this indicates what, the employee's name?
A. Employee name.
Q. And that would be me in this particular case, Robbyn Harris?
A. Right.
Q. Well, I'm still Robbyn, but, you know?
A. Right.
Q. Okay. And over here (Indicating) this indicates the activity codes; is that correct?

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A. Right.
Q. Activity Code 217, what would that indicate?
A. That would be, it's a corporate audit. I don't know the actual dollar amount, but it's on the larger side of the corporate audits that we would have.
Q. Okay. And up here (Indicating), this is the day of the month, correct?
A. Correct.
Q. So then, this would show time charges that were applied to those larger cases?
A. In that time cycle that would have been the time that you charged on that case.
Q. Those particular cases?
A. Whatever cases you did that day.
Q. Okay. So we have Activity Code 217, and down here Activity Code 215. Are those corporate returns, as well?
A. Yes, it is.
Q. And over here (Indicating) R-L-R-T, what does that stand for?

20 A. That would be the related returns.
21 Q. So, over here (Indicating), if we have Activity Code
22 534, would those be related to these Activity Codes 217?
23 A. In this situation it would be.
24 Q. Okay. Again, so these are hours worked on these
25 particular cases during that period?

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1 A. Correct.
2 A. And over here (Indicating), these are ending hours,
3 correct?
4 A. Correct.
5 Q. So there had been some activity on these larger cases?
6 A. In this time cycle there was time charged, right.
7 Q. And in prior cycles, if we have ending hours; is that
8 correct?
9 A. Right.
10 Q. Okay. Again, this is Plaintiff Exhibit 63 reflecting
11 time charges for Robbyn Brown.
12 MR. LLEWELLYN: I would like to clarify the
13 date on the top of that document, please?
14 Q. (MS. BROWN:) Okay. The date on this particular
15 document is what, Mr. Knowles?
16 A. It's February 11, 1994.
17 THE COURT: That's just the date printed.
18 What date does it cover as far as the work?
19 THE WITNESS: The time span? December 25, '
20 93, through January 21, 1994.
21 Q. (MS. BROWN:) So you would have had the
opportunity to
22 pull it over several months then?
23 A. Well, the reporting cycles go throughout the year, and
24 they are set by -- this system feeds into our pay system,
and
25 so there is a set of cycles, 12 cycles a year. So they don't

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1 necessarily run a month, but they will run -- they are all
2 predetermined. This is cycle '94, 1994, cycle 1.
3 Q. But you would have had the ability then to pull these
4 type of reports for each one of those cycles?
5 A. Yes.
6 Q. Okay.
7 THE COURT: Let me ask a question, because
8 this doesn't mean anything to me. Look at that very top
9 line beginning hours, it says "190," end hours says "199."
10 Now, what does that mean?
11 THE WITNESS: Going into this time period
12 190 hours charged to that item.
13 THE COURT: Oh, okay.
14 THE WITNESS: And then during this time period s
15 it adds nine, so it's like a running inventory for us.
16 THE COURT: Okay.
17 MS. BROWN: Okay. We did admit that?
18 THE COURT: We did.
19 Q. (MS. BROWN:) Mr. Knowles, I'm looking at
abstracts.
20 These have not been exhibited yet; just want him to
identify
21 them.
22 Your Honor, I'm doing so because I want him to
23 identify if these are the documents that he relied upon for
24 purposes of that reconstruction that wasn't allowed into
25 evidence.

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1 MS. BROWN: Okay, thank you.
2 THE COURT: Exhibit 57 in its entirety will be
3 admitted.

4 Q. (MS. BROWN:) Mr. Knowles, if I could -- if you could,
5 please, can you identify this document? It's Plaintiff's
6 Exhibit 57, Page 15.
7 A. This would be the cover sheet, which is the -- it's the
8 form that's used to show the annual appraisal ratings on the
9 critical elements for each employee. This is for Tim
10 Neighbors. It's December 9, 1993, date.
11 Q. Okay.
12 A. Tells us that he's a revenue agent, works in exam, what
13 dates are covered by the evaluation, what grade he was at,
14 the series -- there's a revenue agent series, that's just
15 a number there, the standard position description and --
16 position description numbers are those other numbers there.
17 And the reason we are writing this is it's his annual --
18 Q. His annual --
19 A. -- evaluation
20 Q. Okay. Mr. Knowles, I'm sorry, one thing I needed to
21 point out again. Exhibit 57, Page 15, you were the group
22 manager or you were the preparer of this evaluation; is that
23 correct?
24 A. I am the writer, yes.
25 Q. The writer, okay. Can you identify this document?

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1 It's Plaintiff's Exhibit 57, Page 16.
2 A. Well, these are the elements. There is a narrative
3 required, and that has changed over the years how much needs

4 to be put in, but just kind of put -- what I try to do is put
5 a synopsis, and that's what this would be, of what happened
6 in that year during that rating period.
7 Q. Okay. Mr. Knowles, in this paragraph here -- it looks
8 like the first, second, third, fourth paragraph. If I could
9 direct your attention to that paragraph?
10 A. Um-hum.
11 Q. The first line, it says that -- well, why don't you
12 tell us what it says?
13 A. It says during that period he was assigned a group of
14 returns related to a Supreme Court case.
15 Q. Okay. And if these returns were related to a Supreme
16 Court case, would this have been some type of project then?
17 A. Typically what happens, if a case goes to the Supreme
18 Court, people who have the similar issues are put in abeyance
19 until the key case is determined, and then whatever that
20 determination is, we do the same thing with all the other
21 cases.
22 Q. Okay. What about cases that are not -- that have not
23 been started at this time? Isn't it true that the IRS also
24 did projects?
25 A. We do projects, yes.

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1 Q. Okay. So if there was widespread impact, the IRS would
2 initiate a project, is that correct?
3 A. Yes, we do.
4 Q. Okay. Project returns are -- isn't it correct that
5 project returns are not DIF related returns?

A. That is right.
Q. So if the Supreme Court had already decided upon that
issue, that issue would have already been decided for
purposes of the audit; is that correct?
A. Yes, on that issue, right.
Q. Okay. So in that particular situation, would it have
required him to go out and discover or fact-find on anything
if the Supreme Court has already decided upon it?
A. I don't remember this case but, typically, if that case
was in abeyance, we would already know the facts of the
situation. It would just be a matter of handling all the
paperwork to get the volume out, to make all those contacts,
determine if the taxpayers agreed or not. You know, just do
all the processing on it.
Q. But you don't have to really go out there and look
through books and records if the issue had already been
identified?
A. Usually not.
Q. So those would be like preidentified issues?
A. Correct.

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Q. Thank you. Mr. Knowles, I'll go back to that Page 16
of 57. In there you say the cases that were assigned, total,
144 returns. That's quite a bit for a revenue agent, isn't
it?
A. That's very large.
Q. Why did you not assign them to other agents?
A. I have no idea. In fact -- I don't know.

8 Q. This is Exhibit 57, Page 18. Actually, it's landed in
9 the right spot. Mr. Knowles, on that first paragraph it
10 makes note of the need for excise and employment tax,
that
11 Tim would have noted the need for excise and
employment tax
12 examinations, correct?
13 A. Right.
14 Q. Isn't it true that we have particular positions for
15 excise agents or people that specialize in excise taxes
and
16 in employment taxes?
17 A. Yes, there are. There are specialists.
18 Q. Specialists in those particular fields?
19 A. Yes.
20 Q. Those are unique positions; is that correct?
21 A. Yes.
22 Q. So they are not necessarily Grade 13 revenue agents,
23 income tax agents?
24 A. No, they are not.
25 Q. Thank you. Mr. Knowles, I may be asking you to go
back

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1 a little further, but not further than '93, in one of these.
2 I apologize to the Court. I had a late night.
3 You also identified a personal holding company
4 tax case for Tim, too, is that correct?
5 A. I identified one?
6 Q. You don't remember?
7. A. I don't remember.
8 Q. Okay. Can you tell us what exactly is a personal
9 holding company?
10 A. When a corporation just builds its equity, and builds,
11 and builds, and builds it, and doesn't pay it out -- wait a

minute. That's excessive retained earnings.
A personal holding company is when the type of
assets that you're holding onto in that entity generate
income that should be taxed at a higher rate, that we go in and
assess an additional tax on it.
Q. And those are pretty rare? Those type of issues are
pretty rare to find, is it not?
A. We haven't had a lot of them.
Q. Lot of them. This is still Plaintiff's Exhibit Number
57 Page 19. If you could please read that line?
A. "This corporation had been identified by me for that
agent as a personal holding company."
Q. So again, you identified a personal holding company
case for Tim?

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A. No, it was for a different agent.
Q. For a different agent, but you subsequently transferred
that case to Tim?
A. Yes.
Q. And again, these are unique type of issues?
A. Um-hum.
Q. Thanks. Mr. Knowles, this is Exhibit 57, Exhibit 57,
Page 22. Can you hear me? This is Exhibit 57, Pages --
THE COURT: You'll have to go back to the
microphone.
Q. (MS. BROWN:) I'm sorry. What are the pages?
A. 22, 23, 24, 25.
Q. What exactly is that document?
A. Well, it's -- it's a narrative on the evaluation for, I
guess it's Tim. Looks like it printed funny. November 2,
'93, to November 1, '94.
Q. In the narrative you also mention that personal
holding

18 company case. I didn't highlight it, but can you just peruse
19 through it quickly and -- this then would have been the
20 subsequent years' narrative attached to his evaluation, would
21 that be correct?
22 A. I think that's right. What do you want me to do?
23 Q. You make mention of that personal holding company case?
24. A. I'm not certain this is the same case.
25 Q. Let's see. So then would he have had another one in

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1 1994?
2 A. I know he's had more than one in his career.
3 Q. So You've testified that you gave him one in 1993?
4 A. Right.
5 Q. Did you give him other ones since?
6 A. Well, I wouldn't have known --
7 Q. Let me ask you this question then. Managers are
8 responsible for assigning returns to revenue agents, are they
9 not?
10 A. Yes.
11 Q. When you are assigned returns, do you not do a cursory
12 review of those returns prior to assigning them?
13 A. Yes.
14 Q. Isn't it correct you also go in and determine the grade
15 level of those cases?
16 A. Yes.
17 Q. You also go in and determine what issues are there,
18 just a cursory review?
19 A. Yes.
20 Q. Okay. So would it be fair to state then that you would

have made -- you would have reviewed these returns prior to
assigning them to Tim?
A. Yes.
Q. And some of these returns had personal holding company
issues on them.

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A. But I may not have been the one that identified it.
But you can't say for certain that you did or didn't;
is that correct?
A. Correct. The only one I can say I did is the one that
I wrote that I did.
Q. But prior to me showing it to you, you didn't remember
that you assigned that one to him?
A. Oh, no.
So would it be fair to say you wouldn't remember if you
assigned it on these subsequent years, either?
A. No.
Q. Okay. But we do know that you didn't state it in the
'94 evaluation that you had identified these issues, correct?
A. Is that 93's?
Q. We are talking about 1994's narrative now.
A. Did I identify those issues?
Q. Correct.
A. I don't think so.
Q. You don't state that. So a person reading this
wouldn't have any idea whether you set up the issue or
identified the issue, or Tim identified the issue; is that
correct?
A. That's correct.
Q. One of the critical elements for a revenue agent, it is

issue identification, is it not?

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A. Correct. It was at that time.
Q. Okay. And during that time, also, one of the critical elements for a revenue agent was fact-finding?
A. Correct.
Q. Now, you've testified that, with these project kind of cases, there is not too -- well, I'm probably paraphrasing here, but is it your testimony that there is not too much fact-finding that goes on with those cases?
A. Well, every case is different. There are some projects it just identifies that type of industry, and you still have to do all the work that you would normally have to do.
Q. But then there are some projects, too, that identify not necessarily the industry, but the issue; isn't that correct?
A. Right.
Q. So that would be a preidentified issue?
A. Yes.
Q. Okay. Mr. Knowles, were you asked to provide information on source code returns, or returns assigned to your agents by source code?
MR. LLEWELLYN: I'm going to object. Time frame, scope, elements?
MS. BROWN: Okay, 1994 through 1996.
THE WITNESS: As part of?
Q. (MS. BROWN:)Any issue. Have you at any time ever

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been asked to provide that information?
A. I don't think so.

3 Q. Okay. But had you been asked to provide that
4 information, it would have been easy enough then to just
go
5 on ERCS and get source code information?
6 MR. LLEWELLYN: I'll object, Your Honor. He
7 answered the question. He doesn't think so.
8 THE COURT: Her question was had he been
9 asked, could he have provided it from ERCS. I'll overrule
10 the objection.
11 You can answer.
12 THE WITNESS: Yeah, you could pull off of our
13 source code report.
14 Q. (MS. BROWN:) And you could also pull off project
code?
15 A. Listings, right.
16 Q. Right. So then you would have been able to
determine
17 what agents were assigned what type of returns?
18 A. Correct.
19 Q. Correct. Okay, thank you. Mr. Knowles, during the -
-
20 well, you have testified that I was in your group prior to
21 going to the Grand Jury assignment, or if you have not, is
22 that correct?
23 A. Right.
24 Q. During that time period or prior to going into the
25 Grand Jury assignment, I was working cases; is that
correct?

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1 by you?
2 A. That I signed and prepared it December 12th, 1997.
3 Q. Right. So you prepared Tim's evaluation prior to
4 Mr. Lash retiring?

A. Correct.
Q. With the knowledge that Mr. Lash was retiring?
A. Yes.
Thanks. Plaintiff's Exhibit Number 57 -- oh, I'm sorry.
Mr. Knowles, with respect to that last evaluation that I put up, that would have been for Timothy Neighbors for the period ended November 30th, 1997?
A. Yes.
Q. Isn't it true that that also was the appraisal that was placed in the promotion package for 1998?
A. I believe that's correct, yes.
Q. Okay. If I could, Plaintiff's Exhibit Number 57, Page 1, are you familiar with this document, Mr. Knowles?
A. Okay. That would be the job appraisal for Tim Neighbors for the period ending November 30, 1995.
Q. Okay. And you signed it December 19th, 1995?
A. Yes.
Q. Correct?
A. Um-hum.
Q. The narrative associated with that particular

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Q. You don't know. But you don't remember it being a collection referral?
A. It might have been that. I don't know.
Q. When you are preparing these evaluations -- we went over the '93 and '94 evaluations where there were some preidentified issues -- do you factor that in when you're considering these critical elements?
A. Certainly.
Q. You consider whether or not he's getting the work from someone else and not having to do the work?

A. I consider how they got the case, how they worked on the case, and how they got rid of the case. So if they got it at the very end, that's all that they would get considered for. Of course, you take any case, anything about the life of that case you take into -- if it falls within that calendar period.
Q. Okay. With respect to the 1997 evaluation that was used in the 1998 package, isn't it true that at one point you've stated that you increased his overall rating of record from the prior year's rating, the level. It had been at a Grade 12 level?
A. I think, if I remember right, he worked at a Grade 12, and whatever that overall rating was, the next year as a 13 I dropped his rating. But after the second year at that level he continued to do the work he had done previously and had

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raised that evaluation level up to that same level that it had been before when he was a Grade 12.
Q. But you never stated that he was working at that same level; isn't that correct?
A. I don't understand what you mean. You mean as a 12?
Q. In your previous statement --
MR. LLEWELLYN: I don't know. It sounds like improper impeachment at this point. She's attempting to impeach him with something she hadn't asked him about.
MS. BROWN: I thought I did ask him about a prior statement he had made that he had increased Tim's overall rating of record for the 1997 year to the level it had previously been, as a Grade 12 level.

14 THE COURT: Objection is overruled.
15 THE WITNESS: So, I answer, or what?
16 MR. LLEWELLYN: I think he admitted that.
17 Q. (MS. BROWN:) You admit that. But then the second
18 question was, isn't it true in your statement or your
19 response in a prior statement you made no mention of him
20 performing at a Grade 13 level?
21 A. I may not have.
22 Q. Okay. Well, since you're not sure, I'll show you.
23 MR. LLEWELLYN: Your Honor, I would like to
24 know exactly what they are looking at at this point.
25 MS. BROWN: An affidavit Mr. Knowles

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1 submitted.
2 MR. LLEWELLYN: Page number what?
3 MS. BROWN: 91
4 THE COURT: The question is did you make that
5 statement at that time?
6 THE WITNESS: I typed this, yes.
7 Q. (MS. BROWN:) So again, for the record, you never
8 stated that Tim was working at a Grade 13 level when you
9 prepared that evaluation for 1997?
10 MR. LLEWELLYN: Asked and answered twice.
11 THE COURT: Sustained.
12 Q. (MS. BROWN:) Plaintiff's Exhibit Number 58, Pages 1
13 through 3. Can you identify that document, please?
14 A. This is the standard position description for a revenue
15 agent as a Grade 13.
16 Q. Is that a document normally kept in the normal course
17 of business?
18 A. Yes, it is.
19 MR. LLEWELLYN: What are we looking at?
20 THE COURT: Exhibit 58. He described it as a

21 position description for Grade 13 revenue agent.
22 MS. BROWN: Pages 1 through 3.
23 MR.LLEWELLYN: No objection, Your Honor.
24 THE COURT: Be admitted.
25 Q.(MS. BROWN:) Plaintiff's Exhibit Number 58, Page 2,

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Excerpts of Patricia Leatherwood's Trial Testimony – Day 4

1 the selection of the 1996 Grade 13 temporary position, and
2 the grade -- I'm sorry, I'll let you answer that one first.
3 A. That is correct.
4Q. Would you also have relied upon the recommendation of
5 Deloris Featherstone for the 1998 promotion?
6 A. That is correct. Yes.
7 Q. Were you familiar with any of the applicants in that
8 package?
9 A. What do you mean by "familiar with"?
10 Q. Did you interact with them? Did you know them? Have
11 you had any -- had you ever met any of them?
12 A. I'm sure I've met some of the people. I don't have --
13 I did not have interactions with the people, but I knew of
14 them, yes.
15 Q. Okay. So you knew of them. But did you know their
16 qualifications?
17 A. Other than what was written on the papers, no, I did
18 not.
19 Q. When you say "the papers," would that just be the
20 ranking package?
21 A. The ranking package, correct.
22 Q. Okay. So when you made your recommendation – when you
23 make the recommendation, what exactly is provided to

you?
24 What do you get?
25 A. I don't make the recommendation.

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1 Q. I'm sorry, the selections?
2 A. They make the recommendation to me.
3 Q. What do they provide you? Do they just say "I think
4 this person is the best qualified" or do they provide you
5 supporting documents, or I'm just trying to get a feel of
6 what it is that you review or see before you make the
7 selection, or if it's just this person recommends it and then
8 I do because I trust their judgment.
9 A. Before I make a selection, I received the entire
10 package. And the package consists of all of the documents
11 that have been provided, either from the applicant or the
12 evaluation of the applicant, and the ranking information
13 provided by the ranking panel or the ranking individual, and
14 the certificate, which is the document that I sign selecting
15 an individual, which is -- which ranks the individuals
16 according to their scores from the ranking.
17 Q. Okay.
18 A. So I have that package, and then I entertain a
19 recommendation from the branch chief that I would have placed
20 in charge of the package.
21 Q. Have you ever not accepted the recommendation of the
22 branch chief?
23 A. Yes, I have.
24 Q. Okay. So if you have the package there, you are
25 relying upon the evaluations that are contained in that

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ranking package?
A. That, with the recommendation from the branch chief, yes.
Q.Okay. Mrs. Leatherwood, do you get involved in the -- do you have any review of those evaluations, or -- prior to your selecting, making a selection?
A. No, I don't. Ordinarily not.
Q. So you're relying upon the evaluations prepared by someone else then?
A. I'm relying on the services of the ranking individuals or ranking panels, and the numerical scores and cert that comes out of that process.
Q.Okay. And those evaluations were part of that process?
A. Correct.
Q. Okay. Mrs. Leatherwood, so then would it be fair to state that you're relying upon the accuracy of those evaluations?
A. Yes.
Q. Okay. Would it be fair to say that you're relying upon the lack of bias in those evaluations?
A. Yes.
Q. Okay. You stated, Mrs. Leatherwood, that you were a revenue agent previously, or you came in as a revenue agent?
A. That is correct.
Q. So you're familiar with the auditing process; is that

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A. Yes.
Q. From criminal investigation division?
A. That's correct.
Q. From fallouts from Grand Jury cases?

5 A. That's correct.
6 Q. And isn't it also true that in examination, the fallout
7 from some of those cases, those issues have already been
8 identified?
9 A. No, I would not say that is correct.
10 Q. What would you say?
11 A. What I would say is that that's information that
12 perhaps something is not reported correctly, and then it's
13 the job of the agent to determine whether or not it is
14 reported correctly, and that does require development of
the
15 issue.
16 Q. What about those cases that come in that the issue
17 has -- I'm sorry, let me give you an example.
18 It's Plaintiff's Exhibit Number 8, previously
19 admitted. We'll just go down to the bottom of the exhibit.
20 This particular memo was from Richard Knowles to Tim
21 Neighbors, dated December 21st, 1995.
22 MR. LLEWELLYN:I think it's reverse, from Tim
23 Neighbors to --
24 Q. (MS. BROWN:) I'm sorry, from Tim Neighbors to
25 Mr. Richard Knowles. Are you familiar with Mr.
Knowles?

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1 A. Yes. I know who Mr. Knowles is.
2 Q. Okay. On this particular case they were actually
3 discussing whether or not a conflict of interest is there.
4 And on here he states "Since the major items are already
5 determined, i.e., 5gambling income from" -- well, of
course,
6 he's blacked out the taxpayer's name. So then my question
to
7 you then would be, isn't it true that there are cases where
8 the income has already been determined?

A. Well, I thought the question that you asked me, and maybe I misunderstood your question, whether or not there is a requirement to develop an issue. Having an issue identified and developing an issue are not the same thing. An issue can be identified on classification. That does not mean it's incorrectly reported on the tax return. That's where the agent's skills come in in terms of developing that issue, looking at all of the surrounding facts and circumstances, and then deciding whether or not it is an issue. It's just an identified item, other than that.

Q. I understand. And with what you've just demonstrated, that is typically the case with DIF related returns, is it not?

A. Not necessarily. On DIF related returns, often there is no issue identified. Particularly on corporate returns there is no issue identified, and the agent has to look at

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the return and determine what issues appear to have the most compliance risk, and determine, therefore, what issues they are going to examine.

Q. Would it be fair to state then that since DIF returns do not have any preidentified issues, that it takes more development?

A. Some have preidentified issues and some do not.

Q. Okay.

A. So it depends on whether they are classified and have issues as to whether or not they are going to require the agent to identify the issues. And even if they are identified, the agents also are free to identify more issues

13 on the return, or, to not consider an issue that was
14 identified by the classifier based on the surrounding
15 information that they determine in the course of the
16 examination. They can reduce the scope of the
examination.
17 Q. On this particular memo, Mrs. Leatherwood, this
related
18 to some cases being assigned and a possible conflict of
19 interest. What is the IRS's policies on conflicts of
20 interest, or the appearance of conflicts of interest?
21 A. If an agent or any employee identifies the situation
22 where the objectivity would be compromised, or even the
23 appearance of a conflict of interest, they are expected to
24 talk to their manager and remove themself from that
25 particular assignment. That's in our rules of conduct.

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1 Q. Thank you. Mrs. Leatherwood, when you relied upon
the
2 recommendation of Deloris Featherstone -- I don't know if
I
3 can ask it like that -- were you aware or did you have any
4 knowledge that she may have been the object of former
5 complaints, EBO complaints?
6 A. No.
7 Q. No, you were not aware?
8 MR. LLEWELLYN: I'm going to object. That's
9 assuming facts not in evidence.
10 MS. BROWN: That's what we talked about
11 earlier, Your Honor, that I wanted to avoid any problem
with
12 that.
13 THE COURT: Let's have a side-bar.
14 (Side-bar, on the record.)
15 (The following proceedings were held

16 out of the hearing of the jury.)
17 THE COURT: It's highly unlikely any prior EEO
18 complaints would be admissible, in any event. But what are
19 you talking about?
20 MS. BROWN: Dee was one of the responsible
21 management officials that I had named with respect to the
22 retaliation issues.
23 What I would like to ask Miss Leatherwood

24 would be strictly would you have relied upon her
25 recommendation. I'm in that package and she's making a

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Excerpts from Catherine Murphy's ' Trial Testimony – Day 3

1 Q. What grade level were you at that point?
2 I believe I was Grade 11. That's the journey level
3 grade.
4 Q. What was Tim Neighbors' grade?
5 A. I believe he was an 11, also.
6 Q. During that period of time that both you and Tim,
7 Timothy Neighbors, worked for Lloyd Dinkelman,did you
8 believe that he was being assigned better cases than you?
9 A. Well, I think during that time he was. What I really
10 saw was that the manager spent a lot more time developing
11 cases with Tim than he spent with me.
12 Q. How so?
13 A.Well, he would actually go out and work cases with Tim,
14 and they would come back from the field and say, well, we've

15 developed this issue and this issue, and this case of ours is
16 great, and he would not do that with me. He did not go out
17 and work with me on cases.
18 Q. Okay. Well, how did you know that he was assigning
19 better quality cases to Tim?
20 A. Well, I couldn't really know because case work, you
21 know, we are not allowed to really go into other people's
22 case work. Sometimes we talk different issues in the
office,
23 but we really are not supposed to be into other cases. But
24 the issues he would talk about seemed to be more
developed
25 than the kind of issues I was developing in my cases.

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1 Isn't it true that you stated before that it was
2 obvious that Lloyd Dinkelman was assigning better
quality
3 cases with more potential to Tim Neighbors?
4 A. Well, I believe I've said that before, yes.
5 Q. So your testimony is now that he did or did not—or,
6 what is your testimony?
7 A. That I would perceive that he was getting better case
8 Work than I was, developing better issues, because Lloyd
was
9 Just out there developing the issues right with him.
10 Q. He was working with him?
11 A. Right.
12 Q. You said -- didn't you state previously that it was
13 obvious that Lloyd was assigning better quality cases with
14 more potential to Tim Neighbors?
15 A. I might have said that.
16 MS. BROWN: Your Honor, if she equivocates,
17 the document at that point? Motion to admit.
18 THE COURT: You don't have to admit the

19 document, and it wouldn't be appropriate to admit the
20 document, but you can certainly show her the document.
21 Q. (MS. BROWN:) It's Exhibit 9. Can you tell the Court
22 what exactly this is?
23 A. This is an affidavit that I signed in June of 1997
24 under the name Catherine Gilmore, which was my
previous name.
25 I believe this was on an EEO investigation, and I

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1 THE COURT: The question is whether or not you
2 actually made that statement, and the particular statement-
3 THE WITNESS: Yes, I do have that statement in
4 here.
5 Q. (MS. BROWN:) Okay. If you could –
6 A. When I worked for Lloyd Dinkelman, is that what you
–
7 Q. Sure.
8 A. It says, "It was obvious that Lloyd was assigning
9 better quality cases with more potential to Tim Neighbors,
10 whereas I was receiving cases with little or no potential."
11 Q. Okay. And is that your testimony today, or has your
12 testimony changed?
13 A. No, I would still say that.
14 Q. Okay, thank you. In getting back to the illegal
15 gambling income cases that had been reassigned to you
from
16 Tim Neighbors, why were those cases not assigned to you
17 initially?
18 MR. LLEWELLYN: I'm going to object, Your
19 Honor. That calls for speculation.
20 THE COURT: Well, if you
know. Don't
21 Speculate. If you know, but do not speculate.
22 THE WITNESS: Well, I don't know. The manager

23 Is the one that assigns the cases, and I wasn't the manager
24 at that time.
25 Q. (MS. BROWN:) You weren't even in Tim's group at
that

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1 time; is that correct?
2 A. No, not in '95, '96.
3 Q. Okay. So, those cases were assigned to a different
4 group totally. Those cases were initially assigned to Tim,
5 and after he got the Grade 13 they were assigned to you?
6 A.Well, I don't know about when he got his Grade 13 how
7 that applied, but I got some cases that were originally
8 assigned to him.
9 Q. And again, did you receive any additional
compensation
10 for these assignments?
11 A. No.
12 Q. Did you receive any -- on these particular returns had
13 civil fraud referrals been made?
14 A. Not on the ones that I had received, not the cases I
15 had received.
16 Q. Okay. Did you set up civil fraud referrals on any of
17 these returns?
18 A. No.
19 MS. BROWN:I have no further questions for
20 this witness, Your Honor.
21 THE COURT: Mr. Llewellyn?
22 MR. LLEWELLYN: I don't have any questions of
23 this witness, Your Honor -- I have one question.
24 CROSS EXAMINATION
25 BY MR. LLEWELLYN:

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AFFIDAVIT STATE OF ILLINOIS
COUNTY OF ST. CLAIR

I, YOLANDA CAROTHERS-THARPE (employed by INTERNAL REVENUE SERVICE (If employed by agency involved in complaint)) as (Title and grade of position) REVENUE AGENT GS- 13 state:- that I am a black female and have sought EEO counseling without management's knowledge, on more than one occasion, but have never filed a formal EEO complaint.

CASE ASSIGNMENT
I have never worked for Richard Knowles, so can not comment on any case assignments to myself. As a previous group manager, I have worked very closely with Richard Knowles. I have not worked in the same group with Tim Neighbors, as best as I can remember, but I do know that Richard Knowles has assigned Tim Neighbors with high dollar potential, i.e. resulting from Grand Jury cases, and other non-dif returns with high dollar potential. I also have knowledge that Tim Neighbors has probably worked the most fraud cases in the last six years. I also have knowledge that Mr. Neighbors has worked the most productive cases in the last six years.

TIME REPORTING
I was the former group manager of Cynthia Manning, group clerk. There was frictionbetween the three Examination Division clerks regarding lunch breaks, and lateness. A meeting was set up with the three clerks and the union steward, as best as I can remember, to resolve the issue. This was one of numerous meetings involving friction between the clerks. In one meeting Cynthia stated that Richard Knowles had asked Shelia Hunt, his group clerk, to record her time. Shelia did not respond to this accusation, and I never

confronted Richard about it. As group manager, I personally kept track of Cynthia's late arrivals and excessive lunch breaks, NEVER asking any other employees to track her time, when I was not there. There may have been occasions were an Acting Group Manager was asked to record her time in my absence. Cynthia was placed on leave without pay in several instances. (NOTE: At the time of this accusation, Cynthia was not Richard Knowles employee).

Page 1 of 3 pages Deponent's Initials:
Form 5991 (Rev.6-81)

AFFIDAVIT STATE OF ILLINOIS
COUNTY OF ST. CLAIR

ADDITIONAL COMMENTS
I cannot attest to cases being assigned geographically, at all times.

Richard Knowles is a very good writer, therefore providing his employees packages with an "competitive edge" in ranking packages.

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I have read the above statement, consisting of 3 pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.

/s/ Yolanda Carothers Tharpe
Deponent's Signature

Subscribed and (sworn to) before me at Fairview Heights, Illinois On this 20th day of June, 1997 /s/ J Christopher Madden